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7 *Properties, Inc.*

The Hon. Brian D. Lynch  
Chapter 11  
Location: Courtroom 1  
Hearing Date: April 11, 2018  
Time: 9:00 a.m.  
Response Due: April 4, 2018

8 UNITED STATES BANKRUPTCY COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 Olympia Office, LLC, a New York limited  
12 liability company,

Debtor

No. 17-44721-BDL

RECEIVER'S MOTION TO APPROVE  
LEASES AND AUTHORIZE USE OF CASH  
COLLATERAL

13  
14 1. Custodial Receiver, JSH Properties, Inc. ("**Receiver**") seeks entry of an order  
15 under 11 U.S.C. §§ 363(b)(1) and 363(c)(2) and Rules 4001 and 6004 of the Federal Rules  
16 of Bankruptcy Procedure (a) authorizing the Receiver to enter into lease transactions with  
17 respect to three buildings which are part of the of the portfolio of office properties held by  
18 the Debtors (collectively, the "**Properties**"); and (b) authorizing the Receiver to use cash  
19 collateral to pay expenses related to the lease transactions including the leasing commissions  
20 and construction management fees payable to the Receiver under the State Court  
21 Receivership Order.  
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25 RECEIVER'S MOTION TO APPROVE LEASES AND  
AUTHORIZE USE OF CASH COLLATERAL – 1

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## BACKGROUND

2. On May 19, 2016, the King County Superior Court entered an order in Case No. 16-2-10797-4-KNT appointing the Receiver as custodial receiver for the Properties which at that time were owned by the Debtors' predecessor, CDC Properties I, LLC (the "**State Court Receiver Order**"). The Debtors subsequently acquired the CDC portfolio of properties in late September, 2016. Section 3.4.4 of the State Court Receiver Order, provides for payment to the Receiver of a commission for lease renewals in the amount of 2.5% of the rent payable for years 1 through 5 and 1.25% of the rent payable for years 6 through 10 and a construction management fee equal to 5% of the total project costs for any work performed.

3. At the time of the Receiver's appointment, the CDC portfolio suffered from high vacancy rates and significant deferred maintenance issues. Since its appointment and prior to the commencement of this case, the Receiver has worked diligently to stabilize the properties by renewing several key leases with various Washington State agencies. The Receiver has also worked to allay the concerns of tenants that have been unhappy with the poor maintenance practices of prior owner, and concerns about the transfer of ownership to the Debtors, the Debtors' prior New York bankruptcy case and now this case.

4. The Receiver has concluded negotiations to renew the leases of three different State of Washington Agencies for three of the Properties as summarized below:

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AUTHORIZE USE OF CASH COLLATERAL – 2

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1 a. 805 South Mission Street, Wenatchee, Washington. The Department  
2 of Social and Health Services (“**DSHS**”) has agreed to a new 10-year lease for the building  
3 located at 805 South Mission Street, Wenatchee, Washington. The term of the current  
4 DSHS lease expired November 30, 2018. The proposed lease terms are summarized in the  
5 Declaration of Edward Velton. The total estimated out of pocket costs for the proposed  
6 lease are \$1,317,414 which includes the cost of addressing extensive deferred maintenance  
7 allowed by the prior owner and payment of the Receiver’s leasing commission and  
8 construction management fee.  
9

10 b. 640 Woodland Square Loop, Lacey, Washington. The State of  
11 Washington Employment Security Department (“**ESD**”) has agreed to amend its existing  
12 lease to expand its premises and occupy the remaining vacant spaces in the building located  
13 at 640 Woodland Square Loop, Lacey, Washington, bringing it to 100% occupancy. The  
14 proposed terms of the lease amendment are summarized in the Declaration of Edward  
15 Velton. The total estimated out of pocket costs for the proposed lease amendment are  
16 \$339,047 which includes the cost of building out the vacant space per ESD’s requirements  
17 and payment of the Receiver’s leasing commission and construction management fee.  
18

19 c. 645 Woodland Square Loop, Lacey, Washington. The State of  
20 Washington Department of Licensing (“**DOL**”) currently leases the entire building located  
21 at 645 Woodland Square Loop, Lacey, Washington, and has agreed to extend the term of its  
22 existing lease for approximately 30 months. The proposed lease terms are summarized in  
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25 RECEIVER’S MOTION TO APPROVE LEASES AND  
AUTHORIZE USE OF CASH COLLATERAL – 3

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1 the Declaration of Edward Velton. The total estimated out of pocket costs for the proposed  
2 lease are \$160,792 which includes the cost of performing interior and exterior repairs  
3 required by DOL and payment of the Receiver's leasing commission and construction  
4 management fee.

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6 5. As further detailed in the Declaration of Edward Velton, as of February 28,  
7 2018, the Receiver held \$2,272,564.13 in cash all of which is the cash collateral of the  
8 Noteholder. The office portfolio continues to generate positive cash flow after payment of  
9 operating expenses (excluding debt service).

#### 10 **AUTHORITY**

11  
12 6. This Court Should Authorize the Proposed Lease Transactions under  
13 Bankruptcy Code Section 363(b)(1). Bankruptcy Code Section 363(b)(1) permits the  
14 leasing of property of the estate outside of the ordinary course of business after notice and  
15 hearing. Additionally, Section 3.4.4 of the State Court Receiver Order authorizes the  
16 Receiver to negotiate and execute leases with existing tenants subject to the Noteholder's  
17 prior written consent. The Noteholder has advised the Receiver that it approves each of the  
18 proposed lease transactions. As of the date of this Motion, the Debtors have not advised  
19 whether they approve of the proposed lease transactions.

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21 7. Consummating the proposed lease transactions is in the best interest of the  
22 estate. In the Receiver's professional judgment, vacancies and/or short term leasing risk  
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25 RECEIVER'S MOTION TO APPROVE LEASES AND  
AUTHORIZE USE OF CASH COLLATERAL – 4

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1 reduces the market value of commercial properties. In this case, the Receiver believes that  
2 extending the terms of the subject leases and bringing each of the three buildings to 100%  
3 occupancy will preserve and enhance the value of these buildings and the portfolio as a  
4 whole.

5  
6 8. This Court Should Authorize the Receiver to Use Cash Collateral Under  
7 Bankruptcy Code Section 363(c)(2). Bankruptcy Code Section 363(c)(2) permits the use of  
8 cash collateral after notice and hearing or with the consent of all parties with an interest in  
9 such cash collateral. The Noteholder has advised the Receiver that it consents to the  
10 Receiver's use of cash collateral to pay expenses related to the proposed lease transactions.  
11 As of the date of this Motion, the Debtors have not advised the Receiver whether they  
12 approve of the proposed use of cash collateral.

13  
14 9. In this case, performing the lessor's obligations under the proposed lease  
15 transactions requires significant cash expenditures for construction as well as payment of  
16 commissions and construction management fees. Currently, there is no other funding source  
17 for these expenses other than cash collateral. Whether or not all lease expenses can be  
18 funded from cash flow will depend on the timing of the work, contractor billing, and when  
19 the tenants demand payment of their tenant allowances. In the Receiver's judgment,  
20 executing all three lease transaction will very likely consume the bulk of available cash. To  
21 the extent that the cash collateral is exhausted, the Receiver will look to either the Debtor or  
22 the Noteholder to fund any shortfall.  
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25 RECEIVER'S MOTION TO APPROVE LEASES AND  
AUTHORIZE USE OF CASH COLLATERAL – 5

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1 **CONCLUSION**

2 10. WHEREFORE, the Receiver respectfully requests that the Court grant this  
3 Motion, enter an order substantially in the form attached hereto as Exhibit A, and grant such  
4 other relief as is just and proper under the circumstances of this case.  
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6 DATED March 16, 2018.

7 ALSTON, COURTNAGE & BASSETTI LLP  
8

9 /s/ Charles E. Shigley  
10 Charles E. Shigley, WSBA No. 26389  
11 Attorneys Custodial Receiver,  
12 JSH Properties, Inc.  
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25 RECEIVER'S MOTION TO APPROVE LEASES AND  
AUTHORIZE USE OF CASH COLLATERAL – 6

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